IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 97 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NAVJIVAN ROLLER FLOUR & PILSE MILLS LTD.

Appearance:
MRR BB NAIK for MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue and the assessee the following questions have been referred to this court by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961.

At the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that provisions of section 40A(8) would not be applicable on the current account of the Directors, their friends and relatives?"

At the instance of the Assessee :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in restricting the extra shift allowance on machinery to the extent of number of days and thereby restricting the extra shift allowance to Rs. 1,93,920/-?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in not considering the industry as a whole for extra shift allowance?"

2. Learned advocate Shri B.B. Naik has appeared for the revenue whereas nobody as appeared for the assessee, though the assessee has been duly served.

3. So far as the question which has been referred to this court at the instance of the revenue is concerned, learned advocate Shri B.B. Naik has submittd that the question, which has been referred to this Court, has been squarely answered by this Court in I.T.R. No. 247/84 in the case of the assessee itself. Upon perusal of the judgment delivered on 3.5.1999 in I.T.R. No. 247/84, we find that a similar question was raised for the earlier assessment year and the said question was answered in the negative i.e. in favour of the revenue and against the assessee. In the circumstances, the question which has been referred at the instance of the revenue is answered in the negative i.e. in favour of the revenue and against the assessee.

4. So far as the two questions which have been referred to this Court at the instance of the assessee

are concerned, it has been submitted by learned advocate Shri Naik that the said questions have been decided in the case of CIT v. Transpek Industry Pvt. Ltd., 194 ITR 581 as well as by the Hon'ble Supreme in South India Viscose Ltd. v. CIT, 227 ITR 286. The said questions have been answered in the negative i.e. in favour of the assessee and against the revenue. In view of the judgment delivered in the case of Transpek Industry (supra) as well as the law laid down by the Supreme Corut in South India Viscose (supra), the said two questions referred to this Court at the instance of the assessee are answered in the negative i.e. against the revenue and in favour of the assessee.

The reference is thus disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)